

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DIANE DURHAM o/b/o
FRANK E. BOTHWELL, II, a minor,
FRANK E. BOTHWELL II, a minor,

Plaintiffs,

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case Number 01-10258
Honorable David M. Lawson
Magistrate Judge Charles E. Binder

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, GRANTING
THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND AFFIRMING
THE COMMISSIONER'S FINDINGS**

Presently before the Court is the report issued on February 3, 2009 by Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b), recommending that this Court deny Diane Durham's motion for summary judgment and grant Commissioner of Social Security's motion for summary judgment. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 43] is **ADOPTED**, and the motion for summary judgment filed by Diane Durham [dkt # 33] is **DENIED**.

It is further **ORDERED** the motion for summary judgment filed by the Commissioner of Social Security [dkt # 37] is **GRANTED** and the findings of the Commissioner are **AFFIRMED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 25, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 25, 2009.

s/Felicia M. Moses
FELICIA M. MOSES